

**SUBSTITUTE**  
ORDINANCE NO. \_\_\_\_\_

1           AN ORDINANCE amending Title 12 of the Lincoln Municipal Code relating to Parks  
2 by adding a new Chapter 12.22, Enhanced Median, Roundabout, and Cul-de-sac Center Island  
3 Landscaping, to provide conditions for private placement of enhanced landscaping in median,  
4 roundabout, and cul-de-sac center island areas.

5           BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

6           Section 1. That Title 12 of the Lincoln Municipal Code be amended by adding a  
7 new section numbered 12.22.010 to read as follows:

8       **12.22.010     Purpose.**

9           The basic streetscape treatment of Lincoln rights-of-way includes landscaped medians  
10 within street rights-of-way planted with low maintenance, drought-tolerant turf accented with trees  
11 and/or ornamental grasses. The purpose of this ordinance is to allow and regulate the private  
12 placement of enhanced landscaping within medians, roundabouts, and cul-de-sac center islands  
13 within street rights-of-way beyond the basic streetscape treatment.

14          Section 2. That Title 12 of the Lincoln Municipal Code be amended by adding a new  
15 section numbered 12.22.020 to read as follows:

16       **12.22.020     Enhanced Median, Roundabout, and Cul-de-sac Center Island Landscaping;**  
17       **Special Permit Required.**

18          (a)   A special permit approved by resolution of the City Council shall be required for the  
19 private placement of enhanced landscaping within medians, roundabouts, and cul-de-sac center  
20 islands within streets by a person to be responsible for such permanent and continuous  
21 maintenance in those situations where (i) an automated irrigation system is proposed to be  
22 installed, (ii) the applicant is requesting funding assistance from the City for installation and

1 maintenance of the enhanced landscaping, or (iii) the application for an administrative permit has  
2 been denied by the Department of Parks and Recreation.

3 (b) Special permit application procedure. A formal application shall be filed by the  
4 applicant with the Parks and Recreation Department on forms provided by said department for that  
5 purpose, together with a landscape plan based upon the Director's list of recommended plant  
6 materials showing the planting area and the proposed plantings drawn to an accurate scale. The  
7 landscape plan shall include a program for maintenance, including the means by which proper  
8 watering will be provided, and replacement of unacceptable and/or dead trees and plant materials.  
9 Upon receipt of said application, the Parks and Recreation Department shall send copies of the  
10 application, together with the landscape plan, to the Department of Public Works and Utilities and  
11 the Department of Building and Safety for review and recommendation. Upon receipt of said  
12 recommendations, the Parks and Recreation Department shall refer the application to the City  
13 Council along with the Department of Parks and Recreation's recommendations based upon the  
14 recommendations of the various departments and the Department's review of the application.

15 (c) The City Council may, after public hearing, grant a special permit for the placement  
16 of the requested enhanced landscaping, conditioned upon the following:

17 (1) In the event installation of an underground irrigation system is to be the  
18 means by which proper watering will be provided, any boring underneath the public street must be  
19 approved by the Department of Public Works and Utilities and the installation shall be subject to  
20 the requirements of Lincoln Municipal Code Section 24.10.815.

21 (2) Planting and maintenance of the approved landscaping shall be performed  
22 in accordance with the rules and regulations as established therefor by the Director of Parks and  
23 Recreation and approved by the Mayor.

24 (3) The planting and maintenance of the enhanced landscaping described in  
25 subsection (2) above shall be at permittee's own cost and expense, except that the City shall

1 contribute to the cost of such landscaping an amount equal to the estimated cost the City would  
2 have incurred to landscape the area with the City's typical basic landscaping. The City shall also  
3 contribute to the maintenance of such landscaping an amount equal to the estimated cost the City  
4 would have incurred to maintain the area if landscaped with the City's typical basic landscaping  
5 materials. The City shall make said contribution payment on an annual basis at the end of each  
6 permit year.

7 (4) The City of Lincoln is released from any and all liability and responsibility for  
8 any damage to the permitted landscaping which might occur during maintenance or repair work  
9 performed by the City of Lincoln, its departments or utilities, or another quasi-public utility, or  
10 franchisee of the City of Lincoln including, but not limited to, street maintenance and repair, snow  
11 removal, street cleaning, sign replacement, maintenance and repair, or any other maintenance,  
12 construction, or repair function of the City of Lincoln, its departments, utilities, or quasi-public  
13 utilities, or its franchisees, or its successors or assigns.

14 (5) All permitted improvements must conform to all applicable city codes and  
15 ordinances.

16 (6) For purposes of this section, the term "permittee" shall include the permittee,  
17 and permittee's heirs, successors, and assigns, and all terms and conditions of the permit shall be  
18 binding and obligatory on the permittee and such heirs, successors, and assigns.

19 Section 3. That Title 12 of the Lincoln Municipal Code be amended by adding a new  
20 section numbered 12.22.030 to read as follows:

21 **12.22.030 Establishing and Maintaining Small Landscape Planting Beds Within Medians,**  
22 **Roundabouts, and Cul-de-sac Center Islands; Administrative Permit Required.**

23 (a) The Director of Parks and Recreation may approve an administrative permit for the  
24 placement of enhanced landscaping within medians, roundabouts, and cul-de-sac center islands

1 within streets, except in those situations where a special permit is required pursuant to Section  
2 12.22.020.

3 (b) Administrative permit application procedure. A written application for such admini-  
4 strative permit shall be submitted to the Parks and Recreation Department upon forms provided  
5 by said department for that purpose. The application shall identify the name and address of the  
6 applicant and provide a landscape plan showing the location of the proposed landscape planting  
7 bed(s) and placement of proposed landscape plantings. At the time of making such application,  
8 the applicant shall agree in writing to save the City harmless and to protect the City and public at  
9 all times in connection with such work, and to do such work in conformance with specifications set  
10 forth by the City.

11 (c) The Director of Parks and Recreation may grant an administrative permit for the  
12 placement of the requested enhanced landscaping conditioned upon such activity being conducted  
13 pursuant to the rules and regulations as established therefor by the Director and approved by the  
14 Mayor.

15 Section 4. That Title 12 of the Lincoln Municipal Code be amended by adding a new  
16 section numbered 12.22.040 to read as follows:

17 **12.22.040 Special Permit; Bond and Public Liability Insurance.**

18 Every applicant for a special permit shall file with the application a continuing bond in the  
19 sum of not less than \$5,000.00, but in the event that the City Council in the resolution authorizing  
20 the special permit shall waive or fix a different sum, then the bond filed with the application may be  
21 released or a bond for such sum so fixed shall be substituted and filed with the application. All  
22 bonds and sureties shall be approved by the City Attorney before such special permit becomes  
23 effective. All bonds shall be conditioned that the person to whom such special permit shall be  
24 issued and such person's heirs, successors, or assigns shall strictly comply with all applicable laws  
25 and regulations and all conditions of the special permit and which shall save and keep the City free

1 and harmless from any and all loss or damages or claims for damages arising from or out of the  
2 use of the median, roundabout, or cul-de-sac center island therein mentioned; for the full and  
3 complete protection of the City against any and all litigation growing out of the granting of such  
4 special permit or anything done under such special permit and for the removal of any landscaping  
5 and irrigation system permitted above or underneath the public space by such special permit at the  
6 sole expense of the permittee and the permittee's heirs, successors, or assigns; for the faithful  
7 performance and observance of all the terms and conditions of this chapter. Following the issuance  
8 of such special permit and as long as the use continues above or underneath such public space,  
9 the owners of such property from time to time shall also be responsible to the City for the  
10 performance of all of the conditions of said bond above described.

11 Whenever the City Council shall be of the opinion that the surety on such bond given such  
12 special permit issued hereunder has become insufficient and shall so declare by resolution, a new  
13 bond for such special permit shall thereupon be filed with a new surety to be approved by the City  
14 Attorney.

15 In addition to the bond, an applicant for a special permit under Section 12.22.020(a)(i) or  
16 (ii) shall be required to:

17 (a) At all times maintain public liability insurance in the form of a commercial or  
18 comprehensive general liability policy, or an acceptable substitute policy form as permitted by the  
19 City Attorney, with a minimum combined single limit of \$1,000,000.00 aggregate for any one  
20 occurrence. The City Council, as a condition of granting a special permit under Section  
21 12.20.020(a)(iii), may require as a condition of granting such special permit, the providing of the  
22 liability insurance specified herein. The coverages required herein shall be subject to review and  
23 approval by the City Attorney for conformance with the provisions of this section;

24 (b) At all times keep on file with the City Clerk a current certificate of insurance signed  
25 by a qualified agent of an insurance company licensed to do business in the State of Nebraska and

1 approved by the City Attorney for conformance with the provisions of this section evidencing the  
2 existence of valid and effective policies of insurance naming the City as an additional insured for  
3 the coverage required by subsection (a) of this section, the limits of each policy, the policy number,  
4 the name of the insurer, the effective date and expiration date of each policy, the deductibles or  
5 self-insurance retainers of each policy, and a copy of an endorsement placed on each policy  
6 requiring thirty day's notice by mail to the City Clerk before the insurer may cancel the policy for  
7 any reason, and upon request of the City Clerk or the City Attorney, a copy of any endorsements  
8 placed on such policies or the declarations page of such policies. Any termination or lapse of such  
9 insurance shall automatically revoke any special permit issued pursuant to this chapter.

10 Section 5. That Title 12 of the Lincoln Municipal Code be amended by adding a new  
11 section numbered 12.22.050 to read as follows:

12 **12.22.050 Renewal and Termination of Special Permits.**

13 All special permits shall expire one year following date of issuance. After the initial approval  
14 of a special permit by the City Council for enhanced landscaping at a specific location, an  
15 assignment or an annual renewal of such special permit may be administratively approved by the  
16 Director of Parks and Recreation without further action by the City Council, provided that said  
17 assignment or renewal are in conformance with the requirements of this chapter.

18 Section 6. That Title 12 of the Lincoln Municipal Code be amended by adding a new  
19 section numbered 12.22.060 to read as follows:

20 **12.22.060 Revocation of Special Permit.**

21 A special permit issued under this chapter may, after public hearing, be revoked by  
22 resolution of the City Council upon a finding by them of such fact and the giving of five days written  
23 notice to the permittee of the public hearing by the City Clerk for the following reasons:

24 (1) Any failure to maintain the landscaping in the same form as specified in the  
25 special permit.

1                   (2)     Upon a determination that the enhanced landscaping is no longer appropriate  
2     or desired by the City.

3             Upon revocation of said special permit, the permittee shall remove the enhanced  
4     landscaping and, if the City shall so require, replant the area as directed by the Director of Parks  
5     and Recreation with plantings and materials approved by the Director that are typical to the City's  
6     standard landscaping for such areas at the permittee's cost and expense. In the event that  
7     permittee fails to remove the enhanced landscaping and replant the area with such typical  
8     landscaping, the City may cause such removal and/or replanting to be done and the cost of such  
9     work shall become a lien against the property of the permittee.

10            Section 7. That Title 12 of the Lincoln Municipal Code be amended by adding a new  
11     section numbered 12.22.070 to read as follows:

12     **12.22.070     Special Permit; Release and Discharge of Permittee's Obligations.**

13            Permittee may terminate this special permit and be relieved and discharged of permittee's  
14     obligation under this ordinance upon removal of the enhanced landscaping and replanting the area  
15     with plantings and materials approved by the Director of Parks and Recreation that are typical to  
16     the City's standard basic landscaping for medians.

17            Section 8. That Sections 1 through 7 hereof be codified in the Lincoln Municipal  
18     Code as "Chapter 12.22 - Enhanced Median, Roundabout, and Cul-de-Sac Center Island  
19     Landscaping."

20            Section 9. That this ordinance shall take effect and be in force from and after its  
21     passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this \_\_\_\_ day of \_\_\_\_\_, 2004:

\_\_\_\_\_  
Mayor